

PT 00-14

TAX TYPE: PROPERTY TAX

ISSUE: CHARITABLE OWNERSHIP/USE

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**SOKOL
CHICAGOLAND,
APPLICANT**

v.

**DEPARTMENT OF REVENUE
STATE OF ILLINOIS**

**No: 99-PT-0034
(98-22-0044)**

**Real Estate Exemption
for 1998 Tax Year**

P.I.N: 10-05-404-002

DuPage County Parcel

**Alan I. Marcus
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Russell Heitz of Wyeth, Heitz & Brombeck on behalf of Sokol Chicagoland (hereinafter the "applicant"); Mr. Robert G. Rybica, Assistant State's Attorney for the County of DuPage on behalf of the DuPage County Board of Review (hereinafter the "Board").

SYNOPSIS: This proceeding raises the following issues: (1) whether the applicant qualifies as an "institution of public charity" within the meaning of Section 15-65 of the Property Tax Code, 35 ILCS 200\1-1 *et seq*; and (2) whether real estate identified by DuPage County Parcel Index Number 10-05-404-002 (hereinafter the "subject property") was "actually and exclusively used for charitable or beneficent purposes" during the 1998 assessment year, as required by Section 15-65.

The controversy arises as follows:

Applicant filed a Property Tax Exemption Complaint with the Board on December 31, 1998. Dept. Ex. No. 1. The Board reviewed applicant's complaint and recommended to the Illinois Department of Revenue (hereinafter the "Department") that the requested exemption be granted. *Id.*

The Department disagreed with this recommendation via a determination dated June 24, 1999. Said determination found that the subject property was neither in exempt ownership nor in exempt use. Dept. Ex. No. 3. Applicant thereafter filed a timely request for hearing as to this denial (Dept. Ex. No. 3) and subsequently presented evidence at a formal evidentiary hearing. Following submission of all evidence and a careful review of the record, it is recommended that the Department's exemption denial be affirmed.

FINDINGS OF FACT:

- A. Preliminary Considerations and Description of the Subject Property
1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Ex. Nos. 1, 2 and 3.
 2. The Department's position in this matter is that the subject property is neither in exempt ownership nor in exempt use. Dept. Ex. No. 3.
 3. The subject property is located at 2305 Sokol Court, Darien, IL 60561 and identified by the legal description that is attached hereto and incorporated herein. Dept. Ex. No. 2; Applicant Ex. No. 10.

B. Applicant's Organizational and Financial Structures

4. Applicant is a subordinate unit of the American Sokol Educational and Physical Culture Organization, (hereinafter “American Sokol”), a national organization devoted to advancing the common interests of Americans of Czech and Slovak descent in the United States. Applicant Ex. No. 3.
5. American Sokol’s constitution and by-laws provide, *inter alia*, that: (1) those who wish to become members of one of the Sokol units must first fill out an official membership application, then be sponsored by at least one member of the unit, pay a registration fee and submit to a formal membership approval process;¹ (2) those applying for membership must be approved by a $\frac{3}{4}$ majority vote of the members voting at a regular unit meeting; (3) members must pay annual dues and other prescribed assessments; and, (4) those who fail to make such payments for a period of 3 months can be suspended or expelled from membership. Applicant Ex. No. 3.
6. The constitution and by-laws do not contain any provision authorizing applicant to waive or reduce initiation fees or membership dues in cases of financial need. *Id.*
7. The constitution and bylaws further state that each individual unit may adopt its own organizational documents, but only if the membership requirements and other “basic articles” from the national constitution and bylaws are not omitted therefrom. *Id.*
8. American Sokol and all of its subordinate units, including applicant, are exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Applicant Ex. No. 2.

1. For details about this process, *see*, Applicant Ex. No. 3, pp. 63-64.

9. Applicant was originally incorporated under the General Not for Profit Corporation Act of Illinois on February 29, 1960. Its basic organizational purposes, are, per its Amended Articles of Incorporation, to conduct gymnastics and other competitive sports programs that promote physical fitness and develop good moral fiber. Applicant Ex. No. 9.
10. Applicant conducted numerous gymnastics and other athletically-oriented programs at Hinsdale South High School in Darien, Illinois throughout the 1998 assessment year.² Nearly all of these programs were geared toward small and adolescent children. A few, however, were designed strictly for adults. Applicant Ex. No. 4.
11. Applicant imposed fees, that were separate and apart from its regular unit membership dues,³ for all of its athletic programs. Its fee schedule was as follows:

PROGRAM	FEES
One Child Gymnast	\$160.00 per season ⁴
Two Children Gymnasts	\$310.00 per season
Three Children Gymnasts	\$455.00 per season
Adult Gymnast	\$ 80.00 per season

Id.

12. A brochure that gives registration information for applicant's athletic programs states that applicant "will waiver or reduce [its] fees to any child or adult in the community on an individual basis and use this discretion

2. For a full description of applicant's programs, *see*, Applicant Ex. No. 4.

3. These dues, which were \$30.00 for first-time members and 25.00 for all other members, were strictly payments given in exchange for the privileges of maintaining membership in applicant's Sokol unit. Such privileges included attending monthly unit meetings, voting on unit business matters and the like but did not extend to active participation in any of applicant's athletic programs. Applicant Ex. No. 4.

4. Applicant's season generally runs from September to early June. Applicant Ex. No. 4.

without prejudice.” This brochure also indicates that “all Sokol members are required to purchase a [gymnastics] uniform.” *Id.*

13. Applicant obtained revenue from the following sources during the 1998 tax year:

SOURCE	AMOUNT	% OF TOTAL ⁵
Dues	\$17,763.00	86%
Donations from Unspecified Sources	\$ 308.50	1.5%
Interest	\$ 1,000.49	5%
T-Shirt Sales	\$ 37.00	<1%
Exhibition	\$ 197.00	<1%
Fundraiser	\$ 1,145.21	6%
Program Book	\$ 300.00	1.4%
TOTAL REVENUES	\$20,751.20	

Applicant Ex. No. 8.

14. Applicant’s sources of revenue for the same period were as follows:

EXPENSE	AMOUNT	% OF TOTAL
Insurance	\$2,612.00	15%
Facility Rental	\$4,113.00	18%
Public Storage	\$2,400.00	11%
Liebenguth Storage	\$1,579.00	7%
Instructor’s Travel Expense	\$3,928.00	18%
ASO-National Dues	\$2,233.75	10%
ASO-Convention Fund	\$ 432.00	2%
Competition Entry Fees	\$ 711.00	3%
T-Shirts for Gymnasts	\$ 971.00	4%
Newsletter	\$ 652.40	3%
Donations	\$ 590.00	2.5%
Scholarships	\$ 800.00	3.5%
Ads	\$ 419.19	2%
Sum of All Other Expense Items (Including, <i>inter alia</i> , telephone, postage, safety deposit box, etc.) ⁶	\$1,271.58	1% or less for each item
TOTAL EXPENSES	\$22,712.92	

Id.

5. All percentages shown herein are approximations derived by dividing the amounts shown in the relevant category by the total revenues shown on the last line of the second column. Thus, for example, $\$17,763.00/\$20,751.00 = .8556$ (rounded four places past the decimal) or 86%.

6. For a more detailed breakdown of the individual expenses within this category, *see*, Applicant Ex. No. 8.

C. Ownership and Use Issues

15. Applicant obtained ownership of the subject property via a warranty deed dated December 30, 1998. Applicant Ex. No. 10.⁷
16. The subject property was unimproved as of the date of acquisition and remained in that condition throughout the balance of the 1998 assessment year. Dept. Ex. No. 2; Applicant Ex. No. 6.
17. Applicant purchased the subject property with the intention of constructing a building that was to contain gymnastics and other athletic facilities as well as a community center. Dept. Ex. No. 2; Applicant Ex. No. 5.
18. Applicant spent over \$100,000.00 in furtherance of its intended use during the 1998 tax year. These expenditures included, *inter alia*, monies spent for mass earth work, underground utilities, curbs and gutters, land sculpturing, a regional land survey and an artist's rendition of the proposed building. Applicant Ex. No. 7; Tr. pp. 45-46.
19. Applicant had not broken ground on the construction project as of the hearing date. It hopes to do so at unspecified some point in the year 2000. Tr. p. 47.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting the subject property from 1998 real estate taxes. Accordingly, under the reasoning given below, the determination by the Department that the subject property

7. Based on this date of acquisition, the present exemption claim is limited to 1% of the 1998 assessment year by operation of law. See, 35 ILCS 200/9-185.

does not satisfy the requirements for exemption set forth in 35 **ILCS** 200/15-65 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code (35 **ILCS** 200/1-3 *et seq.*). The provisions of the Code that govern disposition of the instant proceeding are found in Section 15-65. In relevant part, that provision states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity.

35 **ILCS** 200/15-65.

A statute exempting property from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. the Association of the Winnebago Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987). Moreover, the party seeking exemption bears the burden of proving by clear and convincing evidence, that the property it is seeking to exempt falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

Here, the relevant statutory exemption is one which requires appropriate proof that the property in question: (1) is owned by an entity that qualifies as an "institution of public charity"; and, (2) is "exclusively used" for purposes that qualify as "charitable" within the meaning of Illinois law. 35 ILCS 200/15-65; Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Korzen").

In Korzen, the court defined "charity" as follows:

... charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

39 Ill.2d at 157 (citing Crerar v. Williams, 145 Ill. 625 (1893)).

It then supplemented this definition by noting that "institutions of public charity":

- 1) have no capital stock or shareholders;
- 2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) dispense charity to all who need and apply for it;

- 4) do not provide gain or profit in a private sense to any person connected with it; and,
- 5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Korzen, *supra*, at 157.

Pursuant to Turnverein “Lincoln” v. Board of Appeals of Cook County, 358 Ill. 135 (1934), I conclude that the subject property was neither in exempt ownership nor in exempt use. This applicant’s organizational structure and programs mirror, if not exactly replicate, the athletic and membership-oriented programs held non-exempt in the following excerpt from the Turnverein court’s opinion:

The word “beneficent” ... has been construed as synonymous with “charitable.” [citations omitted]. ... The character of the appellant and the object for which it was organized, however laudable and beneficial, disclose that it is not primarily a charitable organization under the law. The income of the appellant consists [mainly] of annual dues of its members ... [and] the fees of non-members for the use of its athletic facilities ...[.] The use of an organization’s property for athletic and social purposes by members who pay dues and by members upon the payment of fees does not constitute a dedication of the property to charitable purposes.

Turnverein, *supra*, at 144 - 145.

Applicant argues that the registration brochure (Applicant Ex. No. 4) provides evidence of its exempt status. This document does state that applicant “will waive or reduce” the fees it charges for its athletic programs “on an individual basis.” However, it is well settled that mere statements which reflect an entity’s intent to engage in charitable endeavors do not, *ipso facto*, relieve that entity of the burden of proving that ... [it] actually and factually [engages in such activity].”, Morton Temple Association v. Department of Revenue, 158 Ill. App. 3d 794, 796 (3rd Dist. 1987).

Applicant did not present any evidence proving how many times, if at all, it waived or reduced the fees or membership dues that it charged. Absent such information, a mere statement that it was *willing* to provide such waivers or reductions on an individual basis is legally insufficient to sustain applicant's burden of proof.

Furthermore, applicant's organizational documents do not contain any language that effectuates this statement. These documents, and not any brochures issued subsequent thereto, provide the starting point for any analysis of whether applicant qualifies for exempt status. Morton Temple Association v. Department of Revenue, *supra* at 796.

There are no documents of record showing that applicant waives its membership fees. Rather, the membership article which American Sokol requires applicant to include within its organizational documents provides, *inter alia*, that prospective members must survive a selection process, pay an application fee, and pay membership dues in a timely manner. This selection process is inherently exclusionary toward those whom applicant does not approve. As such, it is distinctly non-charitable.

The application fee and dues requirements raise the inference that applicant violates Korzen by placing financial "obstacles" in the way of those who can not afford to make necessary payments. This inference is strengthened by the fact that applicant's organizational documents are completely devoid of any provision that accommodates such persons or provides for others in financial need. *Accord*, Small v. Pangle, 60 Ill.2d 510, 518 (1975). Instead, these documents impose a sanction of automatic suspension or expulsion on those who fail to pay membership dues within a prescribed time limit. Thus, this provision is, in effect, a penalty for non-payment which "lacks the warmth and spontaneity indicative of charitable impulse." Korzen, *supra* at 158.

Based on the above considerations, I conclude that applicant's membership is, in reality, limited to that class of persons whom: (1) applicant approves via its selection process, and, (2) can afford to make whatever payments applicant prescribes. Because

applicant's membership is so limited, I further conclude that its organizational structure is akin to that of a fraternal and/or social organization.

These organizations generally do not qualify for exempt status because they operate primarily for the benefit of the limited class of persons who receive and maintain membership therein. Rogers Park Post No. 108 v. Brenza, 8 Ill.2d 286 (1956); Morton Temple Association, *supra*; Albion Ruritan Club v. Department of Revenue, 209 Ill. App. 3d 914 (5th Dist. 1991); Pontiac Lodge No. 294 A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1993). Consequently, any "charity" such organizations dispense in the course of their endeavors is but an incidental by-product of operations that do not benefit an "indefinite number of persons". *Accord*, Rogers Park Post No. 108, *supra*. For this and all the above-stated reasons, I conclude that applicant does not qualify as an "institution of public charity" within the meaning of Section 15-65. Therefore, that portion of the Department's determination which denied the subject property exemption from 1998 real estate taxes due to lack of exempt ownership should be affirmed.

With respect to the exempt use requirement, it is briefly noted that applicant did not conduct any of its athletic programs at the subject property during the tax year in question. Even if it did, however, the fact that applicant's organizational structure is consistent with that of a fraternal and/or social organization mitigates against a finding of exempt use. *See Turnverein*, *supra* at 145.

Applicant cites Weslin Properties v. Department of Revenue, 157 Ill. App.3d 580 (2nd Dist. 1987) for the proposition that adapting and developing real estate for an exempt purposes can constitute an exempt use in some circumstances. However, this case is distinguishable from Weslin because there, the Department conceded that the applicant-appellant qualified for exempt status. Weslin, *supra* at 584. This applicant does not so qualify for the reasons set forth above. Consequently, applicant's reliance on

Weslin is misplaced. Therefore, that portion of the Department's determination which found that the subject property was not in exempt use should be affirmed.

Applicant's exemption from federal income tax does not alter any of the above conclusions for two reasons. First, this exemption only establishes that applicant qualifies as an exempt organization for purposes of the relevant sections of the Internal Revenue Code. These sections do not preempt the exemption requirements contained in Section 15-65 of the Property Tax Code. Hence, any exemptions issued pursuant to these provisions can not provide a legally sufficient basis for exempting the subject property from 1998 real estate taxes under Section 15-65.

Second, the exemption from federal income tax does not *ipso facto* prove that the subject property was actually used for exempt purposes during the tax year in question. In re Application of Clark v. Marion Park, Inc, 80 Ill. App. 3d 1010, 1012-13 (2nd Dist. 1980), citing People ex rel. County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970). In light of these holdings, and the analyses demonstrating that the subject property was neither in exempt ownership nor in exempt use, I recommend that the Department's determination denying said property exemption from 1998 real estate taxes be affirmed.⁸

8. In connection with this conclusion, I briefly note that applicant's national president, Fred G. Kala, testified that properties of other Sokol units are exempt from real estate taxation in Illinois. (Tr. pp. 22-23). However, applicant did not produce the exemption certificates for those properties. Moreover, my independent review of pertinent Departmental records fails to reveal the existence of such certificates, and in fact, discloses that only one Sokol unit has ever applied for an exemption with the Department. That unit, Sokol Stickney, was denied a real estate tax exemption pursuant to the unappealed Hearing Disposition in Departmental Docket No. 90-16-562. Administrative Notice.

WHEREFORE, for all the above-stated reasons, it is my recommendation that real estate identified by DuPage County Parcel Index Number 10-05-404-002 not be exempt from 1998 real estate taxes.

March 15, 2000
Date

Alan I. Marcus